

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WEIRTON HEALTH PARTNERS, LLC.

C.A. No.: 5:09-CV-40

Plaintiff,

The Honorable Frederick P. Stamp, Jr.

v.

GABRIELLE YATES,

Defendant.

MOTION FOR SUMMARY JUDGMENT

AND NOW comes counterclaim defendant, Weirton Health Partners, LLC ("WHP"), by and through its attorneys, Avrum Levicoff, Esquire, Denise Abbott, Esquire and Levicoff, Silko & Deemer, P.C. and files the following Motion for Summary Judgment on Gabrielle Yates' Counterclaim, as follows:

1. As a result of Yates' unsubstantiated and false statements that a female resident was performing oral sex on a male resident, that Wyngate was aware of it and that Wyngate instructed employees to disregard such conduct, WHP filed a Complaint against Yates on April 14, 2009, asserting defamation and several other related causes of action.

2. Yates filed an Answer to Complaint and Counterclaim on July 10, 2009, alleging wrongful termination in violation of West Virginia public policy and the tort of outrage.

3. WHP moved to dismiss Yates' Counterclaim and strike Yates' request for attorneys' fees on July 30, 2009.

4. On December 28, 2009, Yates filed a motion to amend her Counterclaim to add claims for abuse of process and violation of W.Va. Code §5-11-9(7), the West Virginia Human Rights Act.

5. In an Order dated March 4, 2010, this Court granted Yates' Motion to Amend her Counterclaim as well as WHP's Motion to Strike and Motion to Dismiss Yates' claim for outrage, with leave to amend. The Order directed Yates to file and serve her Amended Counterclaim, including her additional causes of action, along with any amendment she desired to make on her tort of outrage claim on or before March 19, 2010.

6. Yates failed to file an Amended Counterclaim, abandoning her claims for abuse of process and violation of W.Va. Code §5-11-9(7). Consequently, WHP will not address those claims in this Motion for Summary Judgment. WHP filed an Answer to Yates' remaining Counterclaim for wrongful termination in violation of public policy on March 23, 2010.

7. The parties engaged in extensive discovery, which closed on April 13, 2010.

8. The record evidence indicates that there are no genuine issues of material fact.

9. Weirton Health Partners is entitled to judgment in its favor as a matter of law on all of Yates' counterclaims.

10. According to this Court's March 10, 2010 Order, the substantial public policies implicated by Yates' Counterclaim include W.Va. Code §§16-5D-1(a)(b), 16-5D-8(c), 61-8B-4 and 61-8B-8(a).

11. Yates cannot establish a prima facie case of wrongful termination in violation of the public policy emanating from W.Va. Code §§16-5D-1(a)(b), 16-5D-8(c), 61-8B-4 or 61-8B-8(a) because she (a) did not engage in any conduct specifically protected under W.Va. Code §16-5D-8(c) and, (b) her call to the resident family member reporting false rumors and unsubstantiated statements is not protected conduct in furtherance of any public policy of the State of West Virginia.

12. Yates cannot establish that her call to the resident family member was made in good-faith where she knew or should have known that her statements were false and she did not engage in any effort to confirm whether the false rumors and unsubstantiated statements were true.

13. Yates failed to notify any Wyngate management of her alleged concerns over an incident between the residents that occurred on October 29, 2008 and gave rise to the false rumors she communicated to the resident family member, as she was required to do under West Virginia law and Wyngate policy. As an alternative, Yates did not notify any state agency or authority charged with receiving and responding to complaints of resident abuse

14. WHP's termination of Yates on November 1, 2008 for failing to follow the chain of command and directly contacting the family member of the female resident to report false statements and rumors was appropriate, legitimate and not in contravention of any public policy of the State of West Virginia.

WHEREFORE, Weirton Health Partners respectfully requests that this Court enter an Order granting summary judgment in its favor on all of Yates' counterclaims, dismissing them with prejudice. Weirton Health Partners also respectfully requests that this Court award any other such relief as it may deem appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2010, I electronically filed the foregoing Motion For Summary Judgment with the Clerk Of Court using the CM/ECF System which will send notification of such filing to the following CM/ECF participants:

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